

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
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FM USMISSION USBERLIN
TO AMEMBASSY BONN IMMEDIATE
INFO SECSTATE WASHDC 4989
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USMISSION NATO
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C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1977

E.O. 11652: GDS
TAGS: PGOV, BQG
SUBJECT: TRIAL OF LORENZ/DRENCKMANN TERRORISTS IN BERLIN: ROLE
OF FRG FEDERAL PROSECUTOR

REF: (A) BONN 12295, (B) BONN 12099, (C) USBER 350, (D) BONN 12426
(E) BONN 12441, (F) STATE 177700

SUMMARY: NEUES DEUTSCHLAND CARRIED CRITICISM OF ISSUANCE
OF INDICTMENT BY OFFICE OF FEDERAL PROSECUTOR IN SUBJECT
CASE CLAIMING IT WAS VIOLATION OF QUADRIpartite AGREEMENT
OF 1971. TAGESSPIEGEL CARRIED REBUTTAL DELIVERED BY
HENSCHEL, ACTING SPOKESMAN FOR BERLIN SENAT. HENSCHEL'S
ARGUMENT, WHICH IS WELL TAKEN, IS THAT FEDERAL PROSECUTOR'S
ACTIONS ARE ENTIRELY APPROPRIATE AND SANCTIONED BY SOVIETS
SINCE (A) QUADRIpartite AGREEMENT OF 1971 IMPLICITLY
RECOGNIZES LEGITIMACY OF BERLIN MANTELGESETZ PROCEDURE,
AND (B) LAW UNDER WHICH FEDERAL PROSECUTOR IS ACTING IN
INSTANT CASE IS A FEDERAL LAW TAKEN OVER IN BERLIN VIA
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THE MANTELGESETZ PROCEDURE. EVEN THOUGH WE MAY APPLAUD
HENSCHEL'S REASONING, BERLIN MISSIONS HAVE INSTRUCTED
THEIR CHAIRMAN SENAT LIAISON OFFICER TO INSTRUCT SENAT TO
CEASE COMMENTING ON FOUR POWER ISSUES OR REFERRING TO THE
ALLIES IN ANY FUTURE STATEMENTS RELATED TO THIS CASE.

END SUMMARY.

1. IN 28 JULY EDITION, NEUES DEUTSCHLAND PRINTED FOLLOWING COMMENTARY (INFORMAL TRANSLATION). BEGIN TEXT:

FRG FEDERAL PROSECUTOR BECOMES ACTIVE IN WEST BERLIN

ACCORDING TO THE WESTERN PRESS, THE IMPENDING INDICTMENT AGAINST SIX PERSONS WHO IN THE SPRING OF 1975 ALLEGEDLY KIDNAPPED THE WESTBERLIN CDU CHAIRMAN LORENZ WILL ACTIVATE THE FEDERAL PROSECUTOR'S OFFICE IN BERLIN (WEST). THIS IS ANOTHER ATTEMPT OF THE SUPREME FEDERAL PROSECUTING AUTHORITIES TO EXERCISE THEIR FUNCTIONS IN BERLIN (WEST), I.E., OUTSIDE OF THE SOVEREIGNTY OF THE FRG (HOHEITSGEBIET) AND CONSEQUENTLY BEYOND THE AREA OF COMPETENCE OF THE FEDERAL PROSECUTING AUTHORITIES. SUCH ACTIVITIES OF THE SUPREME PROSECUTING AUTHORITIES OF THE FRG IN BERLIN (WEST) ARE IN GROSS CONTRADICTION TO THE QUADRIPARTITE AGREEMENT AND, IN PARTICULAR, TO THOSE PROVISIONS OF THE AGREEMENT ACCORDING TO WHICH FEDERAL INSTITUTIONS ARE NOT ENTITLED TO EXERCISE CONSTITUTIONAL OR GOVERNMENTAL POWERS IN BERLIN (WEST) AND HAVE NO DIRECT SOVEREIGNTY OVER WESTBERLIN.

WITH THE INTENDED INDICTMENT BY THE FEDERAL PROSECUTING AUTHORITIES BEFORE THE 1ST PENAL CHAMBER OF THE KAMMERGERICHT IN BERLIN (WEST), CERTAIN CIRCLES IN CONFIDENTIAL

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THE FRG WANT TO DISREGARD THE SUBSTANTIAL PROVISION OF THE QUADRIPARTITE AGREEMENT ACCORDING TO WHICH BERLIN IS NOT A PART OF THE FRG AND MAY NOT BE GOVERNED BY THE FEDERAL REPUBLIC, AND WHO, AGAINST BETTER KNOWLEDGE, TREAT WESTBERLIN AS IF IT WERE A LAND OF THE FRG. THIS FACT CANNOT BE CHANGED BY FRG ATTEMPTS TO DISGUISE SUCH ILLEGAL ACTIONS BY REFERRING TO AN ALLEGED APPROVAL OF THE THREE WESTERN POWERS BECAUSE AFTER ALL THE QUADRIPARTITE AGREEMENT WAS SIGNED BY FOUR PARTIES. OBVIOUSLY SUCH AN ACTIVATION OF THE FEDERAL PROSECUTING AUTHORITIES IN WEST BERLIN IS AIMING AT CREATING A PRECEDENT FOR FUTURE ACTIVITIES OF THIS AND OTHER FEDERAL AGENCIES IN BERLIN (WEST) IN ORDER TO SUBORDINATE BERLIN (WEST) TO THE FEDERAL SOVEREIGNTY. THIS CONSTITUTES A VIOLATION OF THE SPIRIT AND WORDING OF THE AGREEMENTS WHICH HAVE BEEN CONCLUDED. END TEXT.

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2. ALSO ON 28 JULY, TAGESPIEGEL CARRIED FOLLOWING
REBUTTAL FROM SENAT (INFORMAL TRANSLATION):

BEGIN TEXT: REPLY BY THE SENAT

HENSCHEL, THE ACTING SPOKESMAN OF THE BERLIN SENAT,
STATED THAT THE ADN CRITICISM HAS TO BE REJECTED AS
AN EXPRESSION OF NEGLIGENT AND AT THE SAME TIME DANGEROUS
IGNORANCE. THE INDICTMENT BY THE FEDERAL PROSECUTOR
IS BASED ON A FEDERAL LAW INTRODUCING A SECOND LEGAL
AVENUE IN NATIONAL SECURITY CRIMES, THE EXTENSION
OF WHICH TO BERLIN WAS EXPRESSLY APPROVED BY THE
ALLIED KOMMANDATURA. THIS INDICTMENT DOES NOT
CONSTITUTE A PRECEDENT BECAUSE THE FEDERAL PROSECUTOR
IN HIS CAPACITY ON THE BASIS OF THE ABOVE-MENTIONED
LAW, HANDLED EARLIER THE TRIAL OF THE FORMER ATTORNEY
MAHLER IN BERLIN. ADN CERTAINLY KNOWS THAT THE ADOPTION
OF FEDERAL LAWS TO BERLIN HAS ALWAYS TAKEN PLACE UNDER
THE RESPONSIBILITY OF THE THREE WESTERN POWERS AND
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THAT THE SOVIET UNION HAS APPROVED THIS PROCEDURE IN
THE QUADRIPARTITE AGREEMENT. END TEXT.

3. COMMENT: THE LAW TO WHICH WE BELIEVE HENSCHEL
WAS REFERRING IS THE GERICHTSVERFASSUNGSGESETZ. WE

ASSUME THAT IN PARTICULAR HE WAS REFERRING TO PARA 74 A SECTION II (ROMAN TWO) OF THAT LAW WHICH STATES THAT THE COMPETENCE OF THE STRAFKAMMER IS NOT APPLICABLE WHEN THE GENERAL BUNDESANWALT TAKES OVER THE INVESTIGATION "BECAUSE OF THE SPECIAL IMPORTANCE OF THE CASE". PARA 74 A SECTION II (ROMAN TWO) WAS PART OF THE AMENDED GERICHTSVERFASSUNGSGESETZ WHICH WAS EXTENDED TO BERLIN IN 1968, WITH THE EXCEPTION OF SEVERAL PROVISIONS UNRELATED TO THE PRESENT CASE. BK/O(68)4 WHICH EXCLUDED PORTIONS OF THE LAW FROM EXTENSION TO BERLIN IS BEING POUCHED TO BONN.

4. WE SHARE NEUES DEUTSCHLAND'S CONCLUSION, IF NOT THEIR ANALYSIS BEHIND IT, THAT WE SHOULD NOT PUT MUCH STOCK IN THE THESIS THAT THE INDICTMENT WAS APPROVED OR CONSENTED TO BY THE ALLIES, AND THUS IS NOT AN EXERCISE OF DIRECT STATE AUTHORITY BY THE FRG OVER BERLIN. WE DO THINK THE ARGUMENT CAN BE MADE AT SOME POINT TO THE SOVIETS THAT THE FEDERAL PROSECUTOR ACTED ONLY AFTER RECEIVING OUR CONCURRENCE, BUT WE ARE CONCERNED THAT IF THIS ARGUMENT IS HIGHLIGHTED IN PUBLIC, IT MAY LEAD TO CONCLUSIONS THAT THE ALLIES ARE TAKING AN ACTIVE ROLE IN THE ACTUAL PROSECUTION. IN ANY EVENT, WE FIND HENSCHEL'S ARGUMENTATION MORE COMPELLING, ESPECIALLY IN THAT IT STATES THAT THE FEDERAL PROSECUTOR'S ACTIONS ARE SANCTIONED BY THE SOVIETS AS PARTIES TO THE QUADRIPARTITE AGREEMENT OF 1971. IF WE DO ISSUE CONFIDENTIAL

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A PRESS STATEMENT (WHICH, IN SPETEL USBER RECOMMENDS AGAINST REPEAT AGAINST AT THIS TIME), WE BELIEVE THAT STATEMENT SHOULD INCLUDE HENSCHEL'S ARGUMENTATION THAT SOVIETS HAVE UNDER QA, SANCTIONED FEDERAL PROSECUTOR'S ACTIVITY IN BERLIN.

5. WHILE WE FIND HENSCHEL'S REMARKS WORTHY, WE ARE DISPLEASED BY THE FACT THAT HE IS DECLAIMING ON ALLIED MATTERS. THE CHAIRMAN SENAT LIAISON OFFICER HAS INSTRUCTED THE SENAT TO REFRAIN FROM MENTIONING THE ALLIES AT ALL, OR ALLIED MATTERS (SUCH AS THE QUADRIPARTITE AGREEMENT), IN THEIR PUBLIC STATEMENTS ON THE TRIAL. GEORGE

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Message Attributes

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